

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
New Part 4 of the Commission's Rules)	ET Docket No. 04-35
Concerning Disruptions to Communications)	
)	
)	

**COMMENTS
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA) hereby submits its comments in response to the Commission's above-mentioned Notice of Proposed Rulemaking (NPRM) concerning the rules pertaining to service disruption reporting requirements.¹

NTCA is a not-for-profit association established in 1954. It represents more than 500 rate-of-return regulated rural telecommunications companies. NTCA members are full service telecommunications carriers providing local, wireless, cable, Internet, satellite and long distance services to their communities. All NTCA members are small carriers that are defined as "rural telephone companies" in the Telecommunications Act of 1996.²

NTCA recognizes the Commission's need to collect information on service disruptions that could impact homeland security, public health, and safety, as well as the

¹ *In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, FCC 04-30, Notice of Proposed Rulemaking (rel. February 23, 2004) (NPRM).

² 47 U.S.C. § 153(37).

economic well being of the nation. Communications are a vital lifeline, especially in times of crises. In the post September 11th world government is understandably more concerned with the continuity of the nation's communications system. However, the Commission should strive to meet its need for information while limiting the burden imposed on carriers, especially small, rural telecommunications providers with limited resources.

I. MODIFIED OUTAGE REPORTING REQUIREMENTS SHOULD BE APPLIED IN A COMPETITIVELY NEUTRAL MANNER

In the NPRM, the Commission proposes expanding the outage reporting requirements to cover all communications platforms, such as wireless providers, cable circuit-switched telephony, and satellite communications. NTCA fully supports the extension of outage reporting obligations to these providers of competitive voice services.

The number of consumers receiving voice service from non-traditional telephone companies has exploded in the last decade. While some of these services were originally viewed as complimentary service to wireline voice, such as wireless, they are now beginning to replace traditional wireline voice service. Some consumers are disconnecting their wireline phone and utilizing wireless as their primary connection – a situation that was not expected to develop in such a short time. Similarly, cable telephony and satellite phones are becoming available to more consumers and are competing against traditional wireline carriers for customers.

The Commission also fails to address one additional type of voice telephony that is growing in popularity, Voice over Internet Protocol (VoIP). While adoption of VoIP is currently small, totaling about 300,000 subscribers nationwide, it has the potential to

increase dramatically as deployment of broadband technologies improves. In fact Gartner Group Consulting has forecast that VoIP packet shipments delivered will exceed the amount of TDM shipments in 2005.

As consumer reliance on these competitive voice services have grown so has the potential impact of an outage of their service. As a matter of public safety and competitive neutrality it is in the public interest to apply the same network outage reporting rules across all communications platforms.

II. THE PROPOSED COMMON METRIC IS APPROPRIATE

The Commission proposes adopting a common metric based on “user minutes” to replace the current outage reporting threshold based solely on number of users affected. A threshold of 900,000 user minutes affected is suggested. User minutes are defined by the Commission as the mathematical result of multiplying the outage duration, expressed in minutes, by the number of end users potentially affected by the outage.³

Under current rules, an outage of 30 minutes duration affecting 30,000 customers must be reported to the Commission. The 900,000 figure was arrived at by multiplying this current outage-reporting threshold of 30,000 customers by the 30 minute duration. The purpose of the common metric was to ensure that duration of the outage as well as number of customers affected was taken into account.

NTCA is not opposed to adoption of the common metric. However, the new rules may place additional burdens on small, rural carriers that were exempt from the current rules due to the fact that most serve less than 30,000-customers. Under the new user minute system an outage of 15,000-customer outage would have to last one-hour and a

³ NPRM, para. 22.

1,000 customer outage would have to last 15 hours to trigger the reporting threshold of 900,000 user minutes. While an outage to a very small, rural ILEC would have to be very long to reach the reporting trigger, it will be an additional burden on small carriers who were previously exempt.

III. COMMISSION SHOULD RECONSIDER EXTENDING SPECIAL OFFICES AND FACILITIES OUTAGE REPORTING REQUIREMENTS TO ALL AIRPORTS

In the section pertaining to reporting for special offices and facilities and 911 services, the Commission proposes modifying the rule's application to airports. Current rules require carriers to report any outage of 30-minute duration or more affecting a major airport. The NPRM proposes extending this requirement to all airports and not just major airports.⁴

This modification may have a large impact on carriers serving rural areas and should be reconsidered in keeping with the Regulatory Flexibility Act. While the vast majority of rural telephone companies do not have a major airport in their service territory, a lot do provide service to small privately owned and operated airports.

Depending on their geography, rural communities can be very diverse. Depending on this diversity there may be a need for a number of private airports serving varied interests. A rural farming community may have several small, private airports primarily used for dusting crops or other agricultural needs. In other rural areas, there may be several private airports to specifically serve remote hunting or fishing lodges and preserves. Similarly, remote ski resorts and lodges often can only be reached by air and

⁴ NPRM, para. 24.

served by private airports during winter months. Finally, some towns and villages in Alaska, for instance, are so remote the only way they can be reached reasonably is by air.

Extending the 30-minute outage reporting requirement to these airports could be an extraordinary burden on small, rural local service providers. The small size and scope of these private airports should not trigger the stricter reporting threshold. The Commission should limit this modification to cover only “commercial service airports” as defined by the Federal Aviation Administration (FAA). The FAA defines a commercial service airport as publicly owned airports that have at least 2,500 passenger boardings each calendar year and receive scheduled passenger aircraft service.⁵

This would expand the number of airports covered by the new outage reporting requirements but exempt outage reporting for telecommunications companies serving the small, private airports throughout rural America. Doing so is in the public interest and in line with the Regulatory Flexibility Act.

IV OUTAGE REPORTING SHOULD NOT BE DUPLICATED ON THE STATE & FEDERAL LEVELS

Many states already require carriers to report network outages in a timely fashion. Often state outage reporting thresholds are much lower than those proposed by the Commission. There is no need to duplicate reporting that is already done on the state level, especially for smaller carriers that have limited resources. The Commission should seek to coordinate with states to share information already collected. The federal rules could act as a minimum reporting requirement that would be effective in states with no or higher outage reporting thresholds. Examples of states that have lower reporting

⁵ 49 U.S.C. §47102(7)

thresholds than those proposed by the Commission for outage reporting are South Dakota and Texas. The new rules should not apply to carriers in states with outage reporting thresholds lower than those established by the Commission.

The Texas Administrative Code obligates carrier to report outages of 4-hours or more in duration affecting the following: 50% of the toll circuits serving an exchange; 50% of the extended area service circuits serving an exchange; 50% of a central office; and 20% or more of an exchange's access lines.⁶ The median number of access lines for NTCA members is 2,500. Under Texas rules an ILEC with 2,500 access lines would be required to file a report on an outage of 4-hours or longer affecting 500 lines (20% of 2,500). Under the Commission's proposed common metric a 500 customer outage would have to last 30-hours to trigger the reporting requirement.

Similarly, South Dakota outage reporting requirements have a much lower reporting threshold as well. Under South Dakota Administrative Rule, carriers are required to report to local area broadcast media serving the affected local service area and to the state commission within one-hour of discovery of any outage in excess of one hour affecting the lesser of twenty-five percent or 750 or more customers.⁷ The twenty-five percent reporting threshold equates to a 625 line outage for a median 2,500 line NTCA member. Under the Commission's proposed rules, a 750 subscriber outage would have to last 20-hours and a 625 line outage would have to last 24 hours to triggering the federal reporting requirement.

⁶ 16 Texas Administrative Code § 26.51(e).

⁷ South Dakota Administrative Rule 20:10:33:28.

Application of the federal rules to small, rural carriers in these states with lower outage reporting thresholds is not in the public interest. To limit confusion, duplication, reduce administrative burdens and allow carriers, especially small rural companies, to direct the bulk of their resources to fixing any network outage instead of filing multiple reports the Commission and states should coordinate their outage reporting requirements. Coordination on outage reporting between states and the Commission is in the public interest and in keeping with the letter and spirit of the Regulatory Flexibility Act.

V. SMALLEST CARRIERS SHOULD BE EXEMPT FROM OUTAGE REPORTING

If the Commission decides to apply its new outage reporting rules to all carriers regardless of their respective state reporting requirements, then small telecommunications carriers should be exempt from the federal requirements. Small, rural carriers, such as NTCA members, have limited staff and resources to dedicate to reporting requirements. In the event of a major outage a small carrier would mobilize all of its resources to bring the system back up and running. Vital resources should not be diverted to filing duplicative reports.

In keeping with the Regulatory Flexibility Act the government has, in many instances, recognized the unique circumstances of small telecommunications carriers and exempted them from burdensome requirements. The Commission should exempt the smallest carriers from the modified federal outage reporting requirements if it does not defer to the states with programs in place. Carriers with less than 100 employees should be exempt from the federal reporting requirements. The 100-employee threshold will

ensure that the Commission receives additional network outage information while not burdening the smallest carriers with additional reporting requirements.

VI. CONCLUSION

NTCA supports adoption of the Commission's proposed common metric and extension of the outage reporting requirements across all communications platforms, including VoIP. Since many states already require network outage reporting, the Commission should not duplicate state level reporting but should coordinate the filing of this information. If the Commission does not adopt a rule exempting companies subject to stricter state level outage reporting then it should completely exclude carriers with less than 100 employees from the federal rules. In addition, the Commission should reconsider its proposal to extend the reporting of outages to all airports but should limit application to airports defined as "commercial service airports" by the FAA. Adopting the modifications addressed herein would serve the public interest by expanding the scope of network outage reporting while excluding small telecommunications carriers with limited resources from further reporting obligations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association, ET Docket No. 04-35, FCC 04-30 was served on this 25th day of May 2004 by first-class, U.S. Mail, postage prepaid, to the following persons listed below:

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